

Law Office of Nora J. Chorover

nchorover@choroverlaw.com

May 28, 2015

BY CERTIFIED MAIL

Curt Spalding, Regional Administrator
EPA New England, Region 1
5 Post Office Square – Suite 100
Boston, MA 02109-3912
Certified # 7014 3490 0000 7429 7612

Gina McCarthy, Administrator
US EPA Headquarters
Ariel Rios Building
1200 Pennsylvania Ave., N.W.
Washington DC 20460
Certified # 7014 3490 0000 7429 7605

Citizen Suit Coordinator
Environment and Natural Resources Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415
Certified # 7014 3490 0000 7429 7599

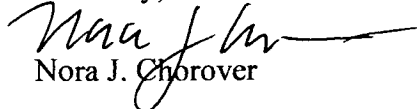
RECEIVED
JUN - 3 2015
OFFICE OF THE REGIONAL ADMINISTRATOR

Re: Notice of Filing of **Consent Decree** in
**Clean Water Action v. United States Salvage Corp. of America, a/k/a Framingham
Salvage Corp., Case No. 1:15-cv-10871-IT**

Dear Sirs and Madam:

Enclosed pursuant to 40 CFR 135.4 please find an executed copy of the parties' proposed Consent Decree resolving the above captioned action brought under the citizen suit provision of the Clean Water Act. We have informed the Court of the parties' settlement and of the statutory requirement of 45 days' notice to the United States prior to entry of any Consent Decree. Please feel free to call me if you have any questions about the enclosed. Thank you.

Sincerely,


Nora J. Chorover

Enclosure

cc: David P. Rosenblatt, Esq.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

_____)	
CLEAN WATER ACTION,)	
)	
Plaintiff,)	
v.)	Case No. 1:15-cv-10871 IT
)	
UNITED SALVAGE CORP. of)	
AMERICA, a/k/a FRAMINGHAM)	
SALVAGE CORP.,)	
)	
Defendant.)	
_____)	

CONSENT DECREE

WHEREAS, Clean Water Action is a nationwide non-profit organization that works to prevent pollution in the nation's waters;

WHEREAS, defendant United Salvage Corp. of America, a/k/a Framingham Salvage Corp., ("Framingham Salvage") operates a facility in Framingham, Massachusetts where it engages in scrap metal salvage activities (the "Facility");

WHEREAS, Clean Water Action alleges that storm water coming into contact with industrial activity at the Facility discharges into the Town of Framingham's municipal storm drain system, and then to Beaverdam Brook, a tributary of Lake Cochituate;

WHEREAS, storm water discharges associated with certain industrial activities are regulated pursuant to the Federal Clean Water Act's (the "Act's") National Pollutant Discharge Elimination System ("NPDES") and general industrial Storm Water Permit, issued by the United

States Environmental Protection Agency (the "Storm Water Permit"). See U.S.C. §§ 1311(a), 1342(a), 1342(p); 65 Fed. Reg. 64746 (Oct. 30, 2000); 73 Fed. Reg. 56572 (Sept. 29, 2008);

WHEREAS, on September 24, 2014, Clean Water Action provided notice of alleged violations of the Act by Framingham Salvage, and of Clean Water Action's intention to file suit against Framingham Salvage, to the Administrator of the United States Environmental Protection Agency ("EPA"); the Administrator of EPA Region I; the Massachusetts Department of Environmental Protection; and to Framingham Salvage, pursuant to Section 505 of the Act, 33 U.S.C. § 1365;

WHEREAS, since it received Clean Water Action's September 24, 2014 notification, Framingham Salvage has done certain work at the Facility that will improve the quality of the storm water discharged from the Facility, including but not limited to cleaning out its Vortechs stormwater treatment unit as well as cleaning out the discharge pipe leading to the storm sewer.

WHEREAS, Framingham Salvage anticipates that the storm water controls described in the foregoing paragraphs, together with implementation of the Best Management Practices and other measures set forth in Framingham Salvage's Storm Water Pollution Prevention Plan, will ensure compliance with applicable state water quality standards and any applicable benchmark concentrations and effluent standards required by the Storm Water Permit;

WHEREAS, the parties have decided that it is in their best interests to resolve the litigation by good faith settlement and compromise without the taking of any evidence or findings of fact or law; and

WHEREAS, this Consent Decree shall be submitted to the United States Department of Justice for the 45 day statutory review period, pursuant to 33 U.S.C. § 1365(c).

NOW, THEREFORE, IT IS HEREBY STIPULATED BETWEEN THE SETTLING PARTIES, AND ORDERED AND DECREED BY THE COURT, AS FOLLOWS:

I. INJUNCTIVE RELIEF

A. Framingham Salvage agrees to operate the Facility in compliance with the applicable requirements of the Storm Water Permit and the Clean Water Act, including any amendments to the Storm Water Permit or the Act that may be made during the term of this Consent Decree.

B. Framingham Salvage shall implement the following measures:

1. Compliance Monitoring. Framingham Salvage shall ensure that stormwater samples collected are “representative of the volume and nature of the monitored activity.” The company shall fully comply with the monitoring requirements of the Storm Water Permit, including Section 6 of said permit, and Appendix B, sections 10-12. Framingham Salvage will also follow the procedures set forth in EPA’s Industrial Storm Water Monitoring and Sampling Guide (March 2009). Framingham Salvage shall prepare a video recording of the first quarterly monitoring event after entry of this Consent Decree by the Court, and provide Clean Water Action with a copy of such video recording. The video recording shall include an accurate record of the time and date on which it was recorded. The video shall make clear and evident, through visual imagery,

- a. the date and time on which it was recorded,
- b. the location or locations at which it was recorded,

- c. the persons present during the recording,
- d. the location of the pipe or conduit being sampled from,
- e. the manner in which each sample is taken, and
- f. the sample or samples taken.

If the video imagery is insufficient to verify the above, then Clean Water Action shall have the right to be present during or require the recording of another representative sampling event in the next calendar quarter. Framingham Salvage shall provide Clean Water Action with copies of the laboratory analytical results of the quarterly sample, together with a copy of the video, within 30 days of when the samples were taken. Nothing in this paragraph limits or modifies Framingham Salvage's sampling obligations under the Storm Water Permit.

2. Hardness Analysis. Framingham Salvage will ensure that the hardness value it uses to calculate its compliance with the Storm Water Permit is the hardness of the receiving water. If Framingham Salvage recalculates the values for hardness applicable to the Facility pursuant to the Storm Water Permit during the term of this consent Decree, it shall submit to Clean Water Action documentation sufficient to demonstrate compliance with the requirements of the Storm Water Permit for such determination within five (5) business days of submission of such hardness values to EPA.

3. Reporting Practices. Framingham Salvage will report all monitoring data collected pursuant to the Storm Water Permit to EPA in accordance with section 7.1 of the permit and will identify specific information on the duration and time of storm event, as well as the time since the previous storm for each monitoring event, in accordance with Section 6 of the permit and Appendix B, sections 10 through 12, and will report the date and time on which the samples were taken.

4. Improved Pollutant Reduction Measures. Framingham Salvage will perform maintenance of its Vortechs pollutant control system at least twice per year, on each of the two years commencing on the Effective Date.

5. Clean Water Action Involvement. For the term of this Decree, Framingham Salvage (either on its own or through its consultant) shall provide Clean Water Action with the following documents, by emailing them to compliance@cleanwater.org and nchorover@choroverlaw.com:

a. Copies of all documents Framingham Salvage submits to EPA, the Commonwealth of Massachusetts and/or the Town of Framingham concerning the Facility's storm water discharges, including but not limited to all documents and reports submitted as required by the Storm Water Permit. Such documents and reports shall be submitted contemporaneously with their submission to the governmental entity.

b. All maintenance records for its stormwater pollution control systems, including the Vortechs system. Maintenance records will be provided within 30 days of each maintenance event.

c. Current copies of the company's SWPPP within seven (7) days of a request by Clean Water Action.

d. Laboratory reports and analytical results of storm water sampling performed by or for Framingham Salvage, within 30 days of receiving the reports.

e. All Quarterly Visual Inspection Forms and Quarterly Sampling Analytical Forms, including laboratory results for the samples, shall be submitted to Clean Water Action with the Annual Report.

II. PAYMENTS

A. Framingham Salvage shall make a payment of \$26,000 to the Massachusetts Audubon Society for a project or projects designed to benefit water quality within five miles of the Facility. The payment shall be made in two equal installments of \$13,000. The first installment of \$13,000 shall be paid within 90 days of this Court's entry of the Consent Decree and the second installment of \$13,000 shall be paid within 120 days of this Court's entry of the Consent Decree. The payments shall be made by certified check, money order or wire transfer to Amber Carr, Massachusetts Audubon Society, 208 South Great Road, Lincoln, MA 01773. Evidence of each such payment shall be provided to Clean Water Action.

B. Framingham Salvage shall reimburse Clean Water Action in the amount of \$21,000 to defray Clean Water Action's investigation fees and costs, expert fees and costs, and attorneys' fees incurred and to be incurred in connection with its work on this matter. Framingham Salvage's payment of fees and costs shall be made within 30 days of this Court's entry of the Decree. Payments shall be made by check, money order or wire transfer to Law Office of Nora J. Chorover, Client Trust Account, 11 Green Street, Boston, Massachusetts 02130.

C. Within 60 days after the date this Court enters this Decree, Framingham Salvage shall pay to Clean Water Action \$8,000 to be placed in the Client Trust Account held for its benefit by the Law Office of Nora J. Chorover, to be used to reimburse Clean Water Action for reasonable fees and costs incurred to monitor Framingham Salvage's compliance with this

Consent Decree for a term of two years after the Effective Date of this Consent Decree. Payment shall be made by check or money order, made out to Law Office of Nora J. Chorover, Client Trust Account, and delivered by certified mail, return receipt requested, or by nationally recognized overnight delivery company, to Nora J. Chorover, Law Office of Nora J. Chorover, 11 Green Street, Boston, MA 02130. Nothing in this paragraph or in this Consent Decree shall restrict Clean Water Action's right to seek additional compensation for fees or costs that it incurs to enforce Framingham Salvage's compliance with the terms of this Consent Decree.

III. MUTUAL RELEASE

A. Upon entry of this Consent Decree by the Court, Clean Water Action, on its own behalf and on behalf of its members, subsidiaries, successors, assigns, directors, officers, agents, attorneys, representatives, and employees, releases Framingham Salvage (and its shareholders, directors, officers, employees, subsidiaries, agents, attorneys, representatives, predecessors, successors, and assigns), and waives all claims, whether known or unknown, for damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which could have been claimed in this Action, for the alleged failure of Framingham Salvage to comply with the Clean Water Act at the Facility, up to the date on which this Consent Decree is executed by the parties. Clean Water Action does not release any claims to enforce any term of this Consent Decree.

B. Upon entry of this Consent Decree by the Court, Framingham Salvage, on its own behalf and on behalf of its shareholders, directors, officers, employees, subsidiaries, agents, attorneys, representatives, successors and assigns, releases Clean Water Action (and its members, subsidiaries, successors, assigns, directors, officers, agents, attorneys, representatives, and employees) from, and waives all claims, whether known or unknown, which arise from or

pertain to this Action, including all claims for fees (including fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which could have been claimed for matters associated with or related to this Action. Framingham Salvage does not release any claims to enforce any term of this Consent Decree.

IV. DISPUTE RESOLUTION

If a dispute under this Consent Decree arises, or either party believes that a breach of this Consent Agreement has occurred, either party may request that the other party meet and confer within fourteen (14) calendar days of receiving written notification of such request, for the purpose of determining whether a violation has occurred and to develop a mutually agreed upon plan, including implementation dates, to resolve the dispute. If the parties fail to meet and confer, or the meet-and-confer does not resolve the issue, after at least seven (7) days have passed after the meet-and-confer occurred or should have occurred, either party shall be entitled to all rights and remedies under the law, including filing a motion with the District Court of Massachusetts. The parties shall be entitled to seek fees and costs incurred in any such motion pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. §1365(d) and case law interpreting Section 505(d).

V. MISCELLANEOUS PROVISIONS

A. The Effective Date of this Consent Decree shall be the date it is approved and entered by the Court.

B. The Term of this Consent Decree shall be from the Effective Date until two years after the Effective Date.

C. This Consent Decree shall be binding on the parties and on their successors and assigns.

D. The Consent Decree may be executed in one or more counterparts which, taken together, shall be deemed to constitute one and the same document.

E. The language in all parts of this Consent Decree, unless otherwise stated, shall be construed according to its plain and ordinary meaning.

F. The undersigned are authorized to execute this Consent Decree on behalf of their respective parties and have read, understood and agreed to all of the terms and conditions of this Consent Decree.

G. All agreements, covenants, representations and warranties, express or implied, oral or written, of the parties concerning the subject matter of this Consent Decree are contained herein.

H. Any notices or documents required or provided for by this Consent Decree or related thereto that are to be provided to Clean Water Action pursuant to this Consent Decree shall be sent electronically, hand delivered or sent by U.S. Mail, postage prepaid, and addressed as follows:

Nora J. Chorover
Attorney for Clean Water Action
Law Office of Nora J. Chorover
11 Green Street
Boston, MA 02130
nchorover@choroverlaw.com

Any notices or documents required or provided for by this Consent Decree or related thereto that are to be provided to Framingham Salvage pursuant to this Consent Decree shall be sent electronically or by U.S. Mail, postage prepaid, and addressed as follows:

David P. Rosenblatt, Esq.
Burns & Levinson LLP
125 Summer Street
Boston, MA 02110
drosenblatt@burnslev.com

Each party shall notify the other party of any change in its contact information within 14 days of any such change.

I. Signatures of the parties transmitted by facsimile are binding.

J. If the Court declines to approve this Consent Decree, or any part thereof, in the form presented, the parties will work together to modify the Consent Decree within 30 days to endeavor to make it acceptable to the Court, so long as that can be done consistent with each party's intent in entering into the Consent Decree.

K. The parties agree to submit this Consent Decree to the Court for its approval and entry as a final judgment, and to stipulate that the case will be dismissed with prejudice after the Term of the Consent Decree has expired.

Dated: May 26, 2015



Clean Water Action

By: Kathleen E. Aterno, National Managing Director

Dated: 5/27/15

David L Applebaum

United Salvage Corp. Of America, a/k/a Framingham Salvage Corp.
By: DAVID L. Applebaum president

Approved:

United States District Judge

